

UNITED STATES

v.

SALIM AHMED HAMDAN

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)
) DEFENSE REQUEST FOR
) WITNESS ON MERITS/SENTENCING:
) XXXX
)
) 26 October 2004
)

1. Witness Request – XXXX- US. v. Hamdan.

2. XXXX is the witness's name; we are unaware of any aliases. We are unaware of any mailing address for this witness. XXXX is a XXXX citizen and resident of the capital city of XXXX in the vicinity of XXXX and may be contacted through the International Committee for the Red Cross or through Defense Counsel. The phone number for contact with Mr. XXXX is XXXX. We are unaware of any e-mail address for this witness. Mr. XXXX speaks only Arabic with a XXXX dialect and will require the use of a translator.

3. XXXX is the XXXX to the defendant. The witness has had significant personal contact with the defendant. Mr. XXXX can testify to the circumstances of the defendant's marriage, stated attitudes regarding Al-Qaeda, the defendant's reaction upon learning of the bombing of the USS COLE, the defendant's reasons for returning to Afghanistan in the December 2000, the Defendant's character for truthfulness, and peacefulness. More specifically, the defendant's XXXX's testimony is expected to include (but is not limited to) the following information.

- Religious/Cultural beliefs – That Salim Hamdan is not a fundamentalist, while he may be Arabic, Yemeni, and a Muslim, he is not an extremist. For example, Salim Hamdan enjoyed parties with friends and family. He was and continues to be supportive of women's rights generally in Yemen and around the world, but specifically he encouraged his wife to vote in the elections in Yemen. Further, Mr. Hamdan's XXXX will testify that Mr. Hamdan would routinely help his wife with household chores, a character trait not found in an extremist Muslim man. Mr. Hamdan's XXXX and other male friends and family would tease and counsel Mr. Hamdan from helping his wife. Finally that while Mr. Hamdan did attend mosque on Fridays as required, he would not go beyond that in terms of outwardly practicing the faith. This is relevant to the Defense case because it directly contravenes the Government's assertion that Mr. Hamdan is in anyway a fundamentalist or extremist.
- Reputation in community – That Salim Hamdan was never a member of Al-Queda and never supported any members of Al-Queda. In fact, Mr. Hamdan's XXXX will testify that just the opposite, Mr. Hamdan was always non-political and certainly not anti-American. This is relevant to the Defense case because it directly contravenes the Government's assertion that Mr. Hamdan is a member of or supported Al-Queda in any way.

- Interest in fighting – That Salim Hamdan was never interested in fighting for or against anyone. Mr. Hamdan's XXXX will testify that he had a conversation with Salim Hamdan wherein he expressed his (XXXX's) interest in going to Afghanistan to join Muslim fighters. In response, Salim Hamdan counseled against this because it wasn't safe and that the only reason Mr. Hamdan was in Afghanistan was for the work.
- Reason why Mr. Hamdan and family were in AF in 2000/2001 – That when Mr. Hamdan and his wife left Afghanistan and traveled to Yemen for XXXX's wedding in 2000, the entire family was looking for a vehicle to procure for Mr. Hamdan so that he could remain in Yemen and start a taxi service. In that year, Mr. Hamdan's father-in-law was very sick and was expected to die. So the family went to Saudi Arabia to participate in the Haji so that the father could accomplish this pillar of Islam before his death. While the family was in Saudi Arabia, the Yemeni security forces went to their communal home in Yemen. XXXX was in Yemen and believed that the reason for the Security Forces visit was to arrest Mr. Hamdan as he had been traveling to Afghanistan and the Yemeni Government was randomly rounding up men after the Cole bombing. As a result of this belief, XXXX had a conversation with Mr. Hamdan and told him not to return to Yemen from Saudi Arabia. The family traveling with Mr. Hamdan in Saudi Arabia agreed and the family decided that it was best for Mr. Hamdan to return to Afghanistan with his wife and children until the authorities in Yemen had finalized their investigation into the USS Cole bombing.

4. Detailed Defense Counsel has spoken to Mr. XXXX through a translator and Mr. XXXX has verbally stated his intentions and his desire to testify on Mr. Hamdan's behalf.

5. The testimony of Mr. XXXX is to be used for Mr. Hamdan's case-in-chief, as well as sentencing and potential rebuttal. We are not intending to call this witness in any hearing or motion prior to commencing trial, but reserve that ability should circumstances change.

6. Detailed Defense Counsel last spoke with Mr. XXXX via a translator on 4 October 2004 and this communication was via phone. During this conversation Mr. XXXX reconfirmed that he and his other family members would be available to testify at Mr. Hamdan's trial in December.

7. Detailed Defense Counsel requests that Mr. XXXX be present to testify on Mr. Hamdan's behalf. The Defense does not agree to an alternative to live testimony.

8. No other witness can be called to attest to the facts known by Mr. XXXX. Further, this witness is not cumulative to anyone else who the Government or the Defense may call.

9. This is a lay witness request.

10. We submit no other matters for your consideration.

CHARLES D. SWIFT
Lieutenant Commander, JAGC, U.S. Navy
Detailed Military Defense Counsel
Office of Military Commissions

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UNITED STATES OF AMERICA)	PROSECUTION RESPONSE TO
)	DEFENSE REQUEST FOR
v.)	WITNESS: XXXX
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SALIM AHMED HAMDAN)	25 October 2004
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The Prosecution in the above-captioned case hereby files the following response and notification of intent not to produce in accordance with paragraph 6 of POM 10. In support of this response, the Prosecution answers the Defense's Request for Witness as follows:

1. Response to paragraph 2. The Prosecution has no objections or supplements to this paragraph.
2. Response to paragraph 3. The Prosecution does not believe the content of the proffer is sufficient. To assess the probative value of the testimony and take a meaningful position on whether the person should be produced for live witness testimony, it adds little to the analysis to merely state:

- a. he knows the Accused's reaction upon learning of the bombing of the USS COLE (without knowing what the reaction was, how can one assess the probative value);
- b. he knows the Accused's "stated attitudes regarding Al-Qaeda" (without knowing what those stated attitudes were , how can one assess the probative value);
- c. he knows the Accused's "reasons for returning to Afghanistan in the (sic) December 2000 (without knowing what those reasons were, how can one assess the probative value)

. Additionally, because much of the testimony will relate to second-hand knowledge and merely repeating what the Accused allegedly told him, we do feel this impacts the analysis in paragraphs 7 and 8.

3. Response to paragraph 4. The Prosecution has no objections or supplements to this paragraph.

4. Response to paragraph 5. The Prosecution has no objections or supplements to this paragraph.
5. Response to paragraph 6. The Prosecution has no objections or supplements to this paragraph.
6. Response to paragraph 7. POM 10, paragraph 4g requires the requestor to state whether they agree to an alternative to live testimony to present what is described in the synopsis, “or the reasons why such an alternative is NOT acceptable.” The POM goes on to say that “It is unnecessary to state that live testimony is better than an alternative. . .” Given the requirements of paragraph 4g, the Prosecution is perplexed that the request was found to be in compliance with POM 10. Paragraph 7 of the request simply states that the witness be present and claims that the Defense “does not agree to an alternative to live testimony.” That’s all. No mention whatsoever is made of reasons why alternatives are not acceptable as specifically required by the POM. Because the Defense has not complied with the requirements of POM 10 at this time, the Prosecution cannot take a position on the feasibility of taking this testimony by alternative methods.
7. Response to paragraph 8. The Defense states that no other witness *can* be called to attest to the facts known by this witness. This is not even internally consistent with the Defense’s own submissions for two other witnesses they have requested from Yemen. Cumulative with the proffered testimony of this witness, XXXX and XXXX are also proffered to provide testimony concerning:
- a. the Accused’s character for peacefulness;
 - b. the Accused’s character for truthfulness;
 - c. the circumstances of the Accused’s marriage; and
 - d. the Accused’s attitude towards al Qaida.

The Prosecution fully acknowledges that the Accused cannot be required to testify. However, it is misleading to state that no other witness *can* be called to attest to these same facts.

8. Response to paragraph 9. The Prosecution has no objections or supplements to this paragraph.
9. Conclusion. For the reasons mentioned above, the Prosecution requests that this witness be denied. The proffer is insufficient to adequately make an assessment and appears to be cumulative with the proffered testimony of other witnesses. Alternatively, the Prosecution asks that this witness, currently located in XXXX, be allowed to testify in a manner other than appearing personally.

XXXX
Commander, U.S. Navy
Prosecutor

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)	DEFENSE REPLY TO
UNITED STATES OF AMERICA)	PROSECUTION RESPONSE TO
)	DEFENSE REQUEST FOR
v.)	WITNESS: XXXX
)	D 31
SALIM AHMED HAMDAN)	
)	28 October 2004
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The Defense in the above-captioned case hereby files the following reply and request for the production of the above witness. In support of this request, the Defense answers the Prosecution's response as follows:

1. Reply to Prosecution Response to paragraph 3. Mr. Hamdan's words and actions are directly relevant to his mental state and are tend to rebut any circumstantial or direct evidence that Mr. Hamdan had entered into an a criminal agreement with Osama Bin Laden.

2. Reply to Prosecution Response to paragraph 7. The Defense does not believe that alternative to live testimony are feasible in this case further the defense would not agree to such alternatives. The witness will offer testimony tending to rebut the core of the Prosecution's case. The Defense, however, is aware that the witness is a family member of the accused and that witness bias will undoubtedly be at issue. As such the Commissions ability to assess the witness credibility is essential to a fair proceeding

3. Reply to Prosecution Response to paragraph 8. The Prosecution mischaracterizes the Defense assertion that the witness is not cumulative. The witness is offered for unique factual testimony. The fact that portion of the witness testimony overlaps does not change this fact nor does the Prosecution's assertion that Mr. Hamdan could testify to the facts in question. Such a rule is not in keeping with Mr. Hamdan's right to present a defense. If testimony of this witness is somehow "cumulative," and therefore excludable, it would guarantee the exclusion of virtually all of the evidence being sought to be introduced by the prosecution in this trial. To infer that Mr. Hamdan's potential testimony is any way related to this issue is singularly in appropriate and demonstrates a complete absence of an understanding of judicial principals and if adopted would preclude the need for the production of any witness

4. Conclusion. For the reasons set out in it request for production of the witness and this reply, the Defense requests the production of this witness

Charles D. Swift
Lieutenant Commander, U.S. Navy
Detailed Defense Counsel

From: XXXX. CIV (L)
Sent: Friday, October 29, 2004 3:15 PM
To: XXXX. CIV (L); 'Swift, Charles, LCDR, DoD OGC'; 'Neal
Katyal'
Cc: XXXX CDR, DoD OGC'; 'Swann, Robert, COL, DoD OGC'; 'XXXX,
LtCol, DoD OGC'; XXXX; XXXX, COL, DoD OGC';
XXXX, Cpt, DoD OGC'; XXXX; XXXX, GySgt, DoD
OGC'; 'Gunn, Will, Col, DoD OGC'; Brownback, Peter E. COL (L)

Subject: United States v. Hamdan - Deferral of Decision - D31

The Presiding Officer has reviewed the witness request in D31. A decision on this request will be made at a later time but not before counsel appear at Guantanamo.

XXXX
Assistant to the Presiding Officers
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Voice: XXXX
Fax: XXXX